

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BARRY EMMETT)	
Plaintiff,)	
vs.)	No. 3:11-CV-582-K
CRAIG WATKINS, ET AL.,)	
Defendants.)	

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

On May 6, 2011, the United States Magistrate Judge entered his findings and recommended that the Court dismiss Plaintiff's case pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to pay the filing fee or seek leave to proceed *in forma pauperis*, and for failure to file a complaint that contains a "short and plain statement" of his claims as required by Rule 8(a)(2) of the Federal Rules of Civil Procedure. On May 9, 2011, Plaintiff filed an amended complaint on the Court's standard prisoner civil rights complaint form. Plaintiff filed a motion to proceed *in forma pauperis*, on May 16, 2011, however he has not paid the statutory filing fee.

After conducting a review of the pleadings, files and records in this case, and the Findings and Recommendation of the United States Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1), I am of the opinion that the Findings and Recommendation of the Magistrate Judge are correct insofar as Plaintiff is barred by 3 strikes (*Emmett v. Office of the Clerk of Court*, No. 7:10-CV-156 (N.D. Tex.) (dismissed on November 1, 2010 as frivolous); *Emmett v. Hawthorn*, No. 4:10-CV-4034 (S.D. Tex.) (dismissed on October 29,

2010 as malicious and for failure to state a claim); *Emmett v. Ebner*, No. 4:10-CV-3611 (S.D. Tex.) (dismissed for failure to state a claim on October 7, 2010); *Emmett v. Ebner*, No. 10-20772 (5th Circuit) (dismissed as frivolous on April 29, 2011), and he has not paid pay the statutory filing fee and therefore dismissal under Rule 41(b) is appropriate.

The Findings are therefore partially adopted as the Findings of the Court. Plaintiff shall have until June 30, 2011, to pay the statutory filing fee or this case will be **DISMISSED** without prejudice and without further notice.

SO ORDERED.

SIGNED this 8th day of June, 2011.

A handwritten signature in black ink, reading "Ed Kinkeade", written over a horizontal line.

ED KINKEADE
UNITED STATES DISTRICT JUDGE